

Supervisor Hyland's Final Statement & Motion

ESI/Furnace Associates Extension - SEA 80-L/V-061-02

Fairfax County Board of Supervisors

July 29, 2014

To say this application has given me heartburn is an understatement. This is a hellish case! Because the devil is in the details. On its face, this application was cloaked in a mantle of green; a green energy demonstration-pilot project on top of a CDD landfill. Take off that mantle of green, pull back the layers of this proposal and like peeling an onion – it will bring tears to your eyes because there are so many real questions, so many serious issues which will result in a profound deleterious effect on the Lorton constituents you and I, Madame Chairman, represent.

Many years ago, I was a candidate for the Virginia House of Delegates (many of you probably didn't know that) when we had multi-member districts in Fairfax County.

The 3 main issues I advanced in my campaign were:

1. Convert trash to energy by incinerating and producing electricity in a mass burn facility.
2. Require recycling and reduce the waste stream.
3. Have single member districts in Virginia rather than the insanity of running for a seat in the legislature over ½ of Fairfax County.

I remember a woman in Greenbriar asking me what she and I had in common as I lived in Mount Vernon. My strained response – well, you have planes over flying your house from Dulles; I have planes over flying my house from National.

I wasn't elected as those issues then didn't impress the voters. (Interestingly, however, Dick Saslaw was part of our team of 5 and was elected; small world)

But today, in Fairfax County, we have single member districts, we recycle over 50% of our waste stream, and we have a mass burn facility which is state of the art, environmentally safe, converts trash to electricity, and is in the Mount Vernon District.

Ironically, in my erstwhile campaign for the state legislature, I had pictures taken while standing on top of a trash heap – the Hilltop Landfill in the Lee District to DRAMATIZE the need for recycling and to burn trash to convert it to energy.

More ironic and perhaps prophetic because of its parallel to the pending SEA, Hilltop Landfill is being closed, a Wegmans is being constructed next door (congrats!!), and active recreation will occur on top of the landfill to be operated by our Park Authority with ownership being retained by the Galliot Family who will ensure against liability. And why couldn't this happen with ESI's landfill?

Years later, in 1987 to be exact, you and I, Madame Chairman, were elected to this board and Lorton became my responsibility to represent, and today you and I both share that responsibility.

Lorton in the Past, Present, and Future

Perhaps, it is predictable that I would describe what Lorton was, what it is today, and what it can be, should be, and will be if we make the right decision this evening.

Lorton in the Past

1. A preponderance of the industrially zoned land in Fairfax County.
2. The Lorton prison – originally a work farm to rehabilitate – then a major prison and enforcement facility for 8000 prisoners from the District of Columbia.
3. A stinky garbage dump at I-95.
4. The odiferous Lower Potomac Sewage Treatment Plant and I had so many complaints, I labeled the smelly perfume, “L’aire de Lorton.”
5. 2 old elementary schools and no high school.
6. And we had the Bar J with its famous or infamous chili within the shadow of the sewage treatment plant (no connection), and we had
7. Hillbilly Heaven (the Dixon family) – like a place out of the old west with a shotgun behind the bar and a fight to be had with the drop of a hat!
8. The then jewel of Lorton – Mason Neck with its thousands of acres of park land, no public sewer for homes albeit within a stone’s throw from the sewage treatment plant, still had some outhouses and most of the homes were on septic, many of which had failing drain fields and couldn’t flush their toilets after one deposit but had to wait for 3-4.
9. And we had 2 debris landfills

But most important, what Lorton didn’t have was a lot of people, in fact the population had been declining and the people living there felt disenfranchised, their voices not being heard because they were so few, and they called Lorton the Armpit of Fairfax County.

Metamorphosis – A Plan

And so in 1990-1991, at the request and urging of citizens and with the Board’s support, we formed a special task force to review the Comprehensive Plan – led by Bob Lundy (God rest his soul) and the thrust of the planning effort was to change the landscape of Lorton, increase the possibility of more intense residential development, and move away from the image of mainly industrial uses. We envisioned a community with a town center and all the amenities associated with thriving residential communities: new schools, places to shop, medical facilities, transportation improvements and recreational options.

And in 1991, a new plan, a new vision for Lorton was adopted by this Board and the rest is history.

1. In 1991, the Board voted to close the I-95 landfill on my motion (after repeated attempts on my part – not quite as many as the meals tax)
2. A new shopping center – Gunston Plaza was authorized.
3. A VRE Station on Lorton Station Blvd was added.
4. Residential developments began springing up – Gunston Corner, Lorton Station, and others.
5. The Lorton Prison was closed and the land bought by Fairfax County.
6. Laurel Hill residential development on land swapped for 800 acres of land, Meadowood, to preserve open space on Mason Neck.
7. Spring Hill Senior Development. [within the shadow of the former prison]

8. 2 new elementary schools
9. A new South County High School
10. A new South County Middle School
11. A new championship golf course [Laurel Hill –site of the U.S. amateur tournament last year]
12. The Lorton Workhouse Arts Center on the Lorton prison grounds
13. Property assessments maintaining value [as high as most areas of the county]
14. The establishment of the Lorton Inova Healthplex
15. Lorton Road to be widened
16. A South County Chamber Of Commerce formed [there are more than 1,600 small businesses located in Lorton]
17. And finally, population has almost doubled

And Now, a True Sense of Place

And every member of this board has had a most important hand in making this miracle happen – you have been responsible and on behalf of my constituents, I thank you.

And now the rest of the story...

Looking back on all we have done to transform Lorton into a thriving, exciting, vibrant place to live, the 2007 SEA 1 application by ESI to close its CDD landfill in 2018 and convert the closed landfill into a 250 acre public park was one of the most important decisions this board has made concerning the bettering of Lorton as a superb place to live and work.

Mr. Mehan, in his February 9, 2006 letter to the community states “the concept we have developed for the Lorton construction debris landfill is designed to transform this site into an asset, and to improve the quality of life in the general community.”

What ESI proposed to the community in exchange for support for an extension to 2018, when the landfill would close, is as follows:

- Raise height to 410 feet [sloping to 410 from planned 290]
- Close in 2018 regardless of completed height
- Forest cap along northern/eastern/southern slopes
- Forest planting to begin in 2007-2008
- Park application
 - Trails 5-6 miles: equestrian, bike, pedestrian, exercise stations
 - Connect-Lorton Valley, equestrian center, NVRPA
 - Bird sanctuaries
 - Indigenous planting
 - 2 overlook points
 - Rustic amphitheater
 - BMX international course on west slope
 - 800 ft sledding course
 - Road access to summit
 - Open areas at summit for kite flying, picnics
 - Limited access to park in 2007-2008 via FPA or NVRPA

Mr. Mehan further stated that the – “site fulfills a critical need in the Northern Virginia Area to recognize that the Lorton area is rapidly becoming the place to live in the region. Our concept will transform the site into a crown jewel asset. The Lorton residents will have a unique park/recreation facility, which will complement the Laurel Hill Park Plan for the long term.”

“The crux of what we are proposing to do is make the landfill go away by screening it with a park.” But the community’s reaction to ESI’s proposal was hardly unanimous. It was hotly debated by the South County Federation. In an October 18, 2006 Connection Article, Susan Fremit stated,

“As president of the South County Federation in addition to being a resident of Lorton Station, Susan Fremit said she’s in a tough situation about the proposal. “The Federation doesn’t have a position right now. Those who don’t want it don’t like the additional height and the thought of vehicles coming to and from the site until 2016 or 2018,” she said.

On the other hand, those who approve of the site see it as an extension of the work underway by the Lorton Arts Foundation, which would be contributing a sculpture park to the open space at the top of the slope. As we move up the height, they’ll have to put in the trees we’re asking for at that level.” Fremit said. “We need to see the trees grow. We need to see an end to that landfill.”

In June, the Fairfax County Park Authority voted to approve taking over the land once the landfill is closed and the renovations are completed, said Judy Pederson, a spokesperson for the Park Authority. “The applicant would deed the 250 acres to the Park Authority to use as a public park, she said. “There are still some questions over whether we’d use any portion of it before the landfill is 100% closed.”

When all was said and done, ESI’s application to extend landfilling through 2018, to then close the landfill and convert it to a public park passed by 1 vote! And then I asked each of you to support me on behalf of my community, which I did on the promise:

1. That ESI’s landfilling would end, be closed forever by the end of 2018.
2. That the Lorton community would forever have a closed landfill converted to a public park.

No one, I repeat no one in the Lorton community, nor staff, and I believe no member of this Board ever thought in 2007 when we supported SEA 1 that this landfill would not close at the end of 2018. (Parenthetically, if we were to approve an extension sought in the application, then there is absolutely no guarantee this landfill will ever be closed! Not in 2015! Never!)

Also, no one thought that we would not have a 250 acre public park on the closed ESI landfill. It was a promise made, it was a condition required in the SEA at a time Fairfax County was pushing to have at least 10% of its land area in park land and open space.

And when the Park Authority balked at accepting liability for the risks of a closed landfill, a public access and use agreement for the Lorton Debris Landfill was negotiated in 2009 between ESI (Furnace Associates Inc.) and the Fairfax County Park Authority - ESI has chosen not to allow access to the public even after executing the agreement! So ESI received the right to landfill for 11 more years with absolutely no benefit to the community or to the county.

Turning to the Application

A few preliminary comments for all staff involved in this case. I believe you have been put in an extremely difficult position with an application clothed in the mantle of green energy and with an overarching atmosphere of trying to find a way to approve this SEA, a case which, in my opinion, is not approvable even in its present amended form.

To Mr. McDermott, to be frank, Frank, I believe we have been consistently, conspicuously and unusually deferential to you and your client with this application which is understandable because of ESI's involvement in the community and because ESI's managed to have its property added to the Green Energy Triangle concept.

And a lot of people have a lot at stake in this application which has taken on a life of its own. My community has pushed back in opposition and has been very critical of the staff report and recommendation of approval. However, and particularly To Mary Ann and Bill, I appreciate and respect the position you have been in and you have done your best to manage a very difficult situation. You have all been extremely professional. I thank you for that.

The Application

Cutting to the chase – why not this application?

ESI's initial application ignored the closure date of 2018 and requested 22 more years of landfilling with no commitment to closure even after 22 additional years. More important, an initially proposed berm/wall circling more than two miles around the base of the existing landfill raised serious concerns as to its construction, its risk of failure, the possibility of use of coal ash to build it and the future liability to the county. Those same issues exist even with a proposed scaled-down berm/wall averaging 22feet which fails to meet the Board's framework. After a further review of the application, staff in DPWES has found that the MSE wall will, in fact, not be 22 feet high. It will be built on top of retaining walls and will be anywhere from 36 to 42 feet high. The applicant measures the height of the retaining wall from the top of the access road, which sits atop several retaining walls. To say that the retaining wall is 17 to 25 feet tall is disingenuous. This clearly fails to meet the Board's proposed framework. Furthermore, the Board should have concerns about the structural integrity and maintenance of the retaining walls. The biggest issue is whether there is sufficient money in the form of a bond or security to fund the prolonged maintenance of the walls after the post closure period. Staff has stated that their preference is for an amount of \$10 million. The applicant has agreed to \$7 million. This leaves Fairfax County taxpayers on the hook to pay for the maintenance of the landfill. In the wide array of needs in Fairfax County, this is a long term liability we should not agree to take on.

In addition, the applicant had threatened to send hundreds of trucks through residential neighborhoods to the recycling center if this application were to be denied. This intimidation was grossly offensive and insulting to me and my constituents, and far exceeded fair and permissible limits of advocacy.

My constituents and I and this Board supported the recycling center sought by ESI, and it has been used as a pawn in this application. This recycling of construction demolition debris should be what we do in Fairfax County – it is the environmentally right thing to do and we should not be blackmailed into eliminating a proposed recycling facility by threatening to send dump trucks through our residential communities!

The Sierra Club has it right in their re-review of this application.

MOUNT VERNON GROUP

ALEXANDRIA, ARLINGTON COUNTY, FAIRFAX COUNTY, FALLS CHURCH, AND PRINCE WILLIAM COUNTY
ONE EARTH, ONE CHANCE

May 8, 2014

The Honorable Sharon Bulova, Chairman,
And Members of the Fairfax County Board of Supervisors
12000 Government Center Parkway
Fairfax, VA 22035

Re: Lorton Landfill ESI Application

Dear Chairman Bulova and Members of the Fairfax County Board of Supervisors:

As is true of many others in the community, the Sierra Club-Mount Vernon Group has recently become aware of additional aspects of the Lorton Landfill ESI permit application, and we wish to amend our previous position (letter sent by the Mount Vernon Group and the Great Falls Group on October 2, 2012) on this permit application. With this letter, we are also responding to concerns with the project from within our own Sierra Club membership.

Energy Park Concerns: In addition to the fact that the proposed ESI energy park is contingent on what appears to be a significant expansion of the existing landfill, the energy park components of the application are not binding. Given ESI's recent history, we are concerned that the County would end up with a larger landfill and no renewable energy benefits. Coupled with the fact that ESI recycles only a small portion of the construction and demolition debris (CDD) at this site and that at least half the CDD they landfill is from out of state, this casts serious doubts on the so called "green aspects" of the project or its economic benefit to Fairfax County.

Landfill Expansion Disclosure: The Sierra Club is perplexed by ESI's unwillingness to divulge the predicted increase in the amount of debris to be landfilled relative to the current amount of CDD at the site. Given this vital missing piece of information, it is hard to predict or envision how this application would impact the environment or the community. We believe that it would be irresponsible for the county, and unfair to the Lorton community, to approve a permit without full disclosure from ESI.

Environmental and Security Liability Concerns after Landfill Closure: The environmental and security impacts of the proposed landfill expansion extend beyond current or future ESI activities at the site. In their permit application, ESI does not assume full responsibility for maintaining the site in perpetuity. Therefore, Fairfax County will be liable for potential impacts to the environment and the community. Specifically, the County, and Fairfax County taxpayers, would be liable for a) maintaining the integrity of a 70-foot tall wall that is in close proximity to residences, b) any leaching into nearby surface and ground water, and c) continued methane emissions.

Concerns with Landfilling of non-CDD: It has also come to our attention that residents report seeing non-CDD debris dumped at the site. The Sierra Club would like to request further investigation of this matter by the County. If non-construction debris is dumped at the site, then different levels of environmental monitoring would be required. There would be a greater risk of water contamination. If there is a greater fraction of organic material than generally assumed from CDD, methane emissions would increase.

Recycling Alternatives and Elimination of Out-of-State CDD: Lastly, County staff does not appear to have considered alternatives to the proposed expansion of the Lorton landfill. We therefore encourage the BOS to approve an extension the current Furnace Associates permit for the estimated amount of time needed to fill the landfill under the conditions of their current permit. In the meantime, staff should conduct a full analysis of alternatives to include:

- 1) sending Fairfax-generated CDD to recycling centers within the County instead of landfilling it, and;
- 2) decreasing the importation of out-of-state CDD to eliminate the need for continued landfill expansion. If Fairfax County continues to encourage the importation of out-of-state CDD, the county will find itself in need of massive CDD landfill construction/expansion in perpetuity. The County would be importing out-of-state CDD at the expense of communities and the environment in Fairfax County. Again, this is a policy that needs to be re-evaluated, as the proposed landfill expansion appears contrary to the current Comprehensive Management plan, which prioritizes reuse and recycling over landfilling. If the County should find through these analyses that the Special Exception Application (SEA) is not aligned with stated county policies on promoting reuse and recycling, then the County should actively seek ways to increase CDD recycling within the county and reduce out-of-state importation of CDD.

Sincerely,

Robert (Rick) Keller, Chair, Mount Vernon Group
Virginia Chapter, Sierra Club

Dr. Ana I Prados, Air Quality Chair, Mount Vernon Group, Virginia Chapter, Sierra Club

The Sierra Club position is consistent with the reaction of so many who support the Green Energy Triangle concept of the task force but who were sobered by the revelation that the cost to include ESI's property was extension of landfilling for another 22 years (now 7) and the hundreds of thousands of trucks continuing to come to the landfill, over half from out of state.

The amended application pending before the Board is a bare-bones version of the original submission stripped of community benefit, and a naked proposal to enlarge and expand this landfill. The applicant has withdrawn the proposal to contribute \$10 million to the Board for consideration for community needs in the Lorton/South County area, the applicant has withdrawn its proposed \$3.2 million to the park authority, has withdrawn \$200,000 contribution to the Board in an educational feature that describes the renewable energy feature, has withdrawn the offer to make improvements to the Apple Orchard Recreation Area and support garden activities, to contribute \$50,000 to assist in the management of the community garden and soil testing. The applicant has reduced the levels of methane gas to be provided to the county and withdrawn their monetary commitment of methane gas was not provided to certain levels. Finally, the applicant has withdrawn the offer to provide an observation point and tours. In addition, the buyout provision of the green energy proposals (now solar,) geothermal and methane is reduced to \$6.5 million vs. \$11.5 million if ESI decides not to implement these projects. Thus it is possible that the green energy proposals may never happen at ESI's discretion or that of its successor in interest.

Two significant issues remain. The suggestion that the closure of ESI's landfill in 2018, as promised and as required in the SEA would be an impediment, a disincentive, and the antithesis to redevelopment and development in Fairfax County, particularly Tysons Corner, Springfield Mall, and other redevelopment areas. This position was advanced particularly by the Fairfax County Chamber Of Commerce and the Mount Vernon Lee Chamber Of Commerce. Incredulity has been the reaction of those actually developing in Fairfax County or engaging in re-development activities. The developers at Springfield Mall and Tysons assert the contrary and as Mr. Patteson's Memo to the Board (dated June 11, 2014) states,

"With the nine noted facilities in Northern Virginia, the assumption that the private sector will continue to provide the required facilities, and the interest expressed by one firm to build a CDD MRF in responding to our RFEI last year, CDD recycling and transfer alternatives should be available to support development in the County. Some materials will however, most likely need to be hauled greater distances if they are only suited for landfill disposal."

Several of you have reached out to the development community to validate the Chambers' concern and dispelled the notion that Fairfax would be harmed if the landfill were to be closed!

This is a non-issue which should not be dispositive in this case.

Finally, there is the issue of certainty, reliability, and credibility in land use cases raised by this application. As expressed in the beginning, 'say what you mean and mean what you say.' Tell me the landfill will close in 2018, I should be able to believe it. Tell me I'm going to have a park on top of a closed landfill, I should be able to believe it, particularly if it's a condition required by the by the Board of Supervisors in its decision. Public trust and confidence in our land use decision-making process is at stake. If we can't rely upon conditions set by the Board, if this Board approved the amended application to close his landfill in 2025, I could not and would not believe, with any certainty, that it would happen. The only way to know when this landfill will be closed, or if it is ever to be closed, is to deny this application.

If this landfill was in your district, I believe you would feel exactly as I –this amendment to an amendment which was supported to close this landfill in 2018, must be denied if we are to be believed, if we are to be relied upon, if our process is to have credibility.

The public's trust and confidence in our ability to represent them is raised by this case. I ask you to do the right thing for the people of Lorton and for all of Fairfax County.

Therefore, Madam Chairman, I move that the Board of Supervisors deny SEA 80-L/V-061-02.